EXHIBIT F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 17

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IN THE MATTER OF THE APPLICATION OF
JEAN RICHARD SEVERIN,

Petitioner,

-against-

Index No.
655086/2017

THE DEPARTMENT OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK,

Respondent.

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Transcript of Motion Proceedings
New York Supreme Court
60 Centre Street
New York, New York 10007
January 14, 2019

B E F O R E:

HON. SHLOMO S. HAGLER, Justice of the Supreme Court

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LAURA L. LUDOVICO
Senior Court Reporter
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Proceedings

THE COURT: Good morning. Welcome. I'm Judge Hagler.

Counsel, is everyone ready to proceed?

MR. GLASS: Yes.

MR. CARTER: Yes, Your Honor.

THE COURT: This is an Article 75 proceeding wherein the petitioner is seeking to vacate the termination of the hearing officer, who found just cause for termination of the petitioner's employment.

Counsel for Petitioner, are you ready to proceed?

MR. GLASS: Yes.

THE COURT: Please argue the petition.

MR. GLASS: Okay. Your Honor, just to let you know, I took over this case from another attorney just recently, so she had --

THE COURT: Welcome aboard.

MR. GLASS: Would you like me to stand or sit?

THE COURT: Sit. You know my policy, we're informal.

MR. GLASS: Okay.

THE COURT: I want the arguments as quickly as we can, then we go one case to the other.

MR. GLASS: Sure.

THE COURT: And we try to do it quickly, but we want to get the arguments out so that everyone has due

process and has an opportunity to be heard. Remember, this is your only time in front of the Court.

MR. GLASS: Okay. Well, Mr. Severin is a 20-year teacher with the Board of Ed.

THE COURT: Is Mr. Severin seated next to you?

MR. GLASS: Yes, he is.

THE COURT: Welcome, Mr. Severin.

MR. GLASS: In the 20 years with the Board of Ed, he had a very good record with the Board of Ed until he got to the school under Steven Dorcely, Principal Steven Dorcely. Things started fine at the school until the Summer of 2014 when he reported Mr. Dorcely for encouraging him to change Regents grades. This happened in the Summer of 2014.

He was encouraged by his union to report this to the Special Commissioner of Investigation. When Mr. Dorcely found out about this report, his attitude towards Mr. Severin changed dramatically, which led to a relentless barrage of disciplinary letters and other allegations of misconduct ever since Mr. Dorcely found out about that in approximately September of 2015 -- '14.

As you can see in the record, there was a first 3020-a commenced by Mr. Dorcely against Mr. Severin in front of James Brown, the arbitrator. That case involved a series of allegations from '14 to '15, up to about April of

2015, which resulted -- the arbitrator in that case recognized the hostility and retaliatory nature of conduct towards Mr. Severin and only issued him a $2,000 fine at that point.

During the -- almost the -- just about when that proceeding concluded, the Board decided to bring a second set of charges against Mr. Severin and that's why we're here today. Now, some of that raises some due process concerns because some of those charges that could have been part of the first proceedings were made part of a separate second proceeding, and part of what the board was doing was arguing, well, he has a prior now, we have this second set of charges and now he's got a prior. There was no reason why that first set of charges could not have been heard together with the second set of charges.

THE COURT: I have to tell you, that's an ironic argument because I usually hear it's the other way around. I usually hear it's prejudicial to consolidate two different specifications. That's the argument that I've gotten from you and from petitioners throughout the last five years. I've never heard anyone argue the converse, that it's prejudicial to split it up.

Why would it be prejudicial?

MR. GLASS: Well, because in this case you have an arbitrator who would have seen the whole context and

recognized the retaliation and the incident that really got him fired in the second set of the allegations is from April of 2015, which is the same time that charges from the first proceeding were held. So if he had one consolidated proceeding, there would have been no prior and we believe Mr. Brown would have just found this to be, you know, continuing conduct of a principal who had retaliated against Mr. Severin.

THE COURT: Isn't that speculative? Why wouldn't the charges alone stand on the veracity of them? Either they are justified, sustained or not. That's what wins or loses the case, they stand or fall based upon the merits.

MR. GLASS: But it wasn't one egregious -- you know, this was a series of a lot of different allegations, so it's easier for the board to argue, you know, that there was a prior and that he had prior discipline. I mean, this isn't one horrific allegation of a teacher, this is a series of death by a thousand cuts here.

So my argument would be that if this was heard together by Mr. Brown, Mr. Brown would have considered this in the context of the retaliatory nature of the relationship after he reported the principal. And you see that in Arbitrator Brown's decision, I think it's part of the record, the first decision, where he does acknowledge there was even a calling off period that the superintendent

had ordered between the teacher and the principal in that case because it had gotten so bad.

And this is basically what Mr. Williams, the arbitrator, fired him in the second case, essentially, it appears, because he lost his cool about the principal. And that's really the nature of the allegation that got him terminated. If you look at the other allegations when he was an ATR after he was reassigned from the first case, there are very, very minor misconduct and I think even Mr. Williams acknowledged that this would not be worthy of termination.

So I think you have to look at the whole procedural context here and realize that Mr. Severin has lost his job because he was a whistleblower and whether it took two sets of 3020-a charges to do it or three or five or one, I mean, this is all stemming -- this was a perfect teacher who had no issues until, you know, he antagonized the principal for reporting him for misconduct. So I think that's what I see here.

And I just wanted to cite -- I know the standard has been very difficult for teachers after those cases, we've discussed this, but there seems to be hope for teachers. I'm aware of two decisions from this Court that have still recognized this shocking to the conscience standard, and one is the Dikovski(ph), which has been cited

in the previous papers.

And just recently in December Judge Tisch vacated a termination on the basis of finding it shocking to the conscience under the circumstances. That's the matter of Brown v. Board of Education, 2018 N.Y. Misc. LEXIS 5904 [December 3, 2018]. I don't know if you'd like a copy of that decision.

THE COURT: I could look at it, but we all know what the standard is. It didn't change. As a matter of fact, it's the opposite of what you just said. In Bolt v. New York City Department of Education, 30 NY3d 1065, Justice Rivera, in a very thorough decision, delineated and clarified the standard for shocking the conscience and whether or not there is some wiggle room that you just mentioned. And Justice Rivera actually went back and cited the case law saying that you don't second-guess the hearing officer's determination. As long as there's any possible grounds, then it would stand scrutiny.

It went the other way at the Court of Appeals. And I don't think that there's been a movement to undermine the hearing officer's determination in that regard. Quite frankly, it went the other way, it went more stringent pursuant to the Bolt decision.

MR. GLASS: Oh, no, I acknowledge that. I'm just saying that just recently, though, in December there are

judges of this Court that are still vacating, even under the Bolt standard and this decision cites Bolt and still finds that there are circumstances. I understand, it's limited.

THE COURT: Quite frankly, I did one also.

MR. GLASS: Oh, did you?

THE COURT: And the Appellate Division, I think, reversed me recently on it. The courts do justice. If I believe there was a situation where there was a determination that shocks my conscience, I don't hesitate to do so, and I did so under those circumstances. I think it was your case as well, that you argued.

MR. GLASS: Since Bolt?

THE COURT: It was since Bolt, yes. And the Appellate Division reversed saying that the termination of the -- it was an individual that was like an assistant --

MR. GLASS: Principal.

THE COURT: -- administrator.

MR. GLASS: Yes, the difference, though, that's a slightly different standard because he was a probationary assistant principal. What I'm arguing here is this is a tenured teacher, it's a different standard.

THE COURT: It was a probationary employee, correct, but nonetheless, there was still a termination, and it's a little different, but nonetheless, I have done

that under certain circumstances and my colleagues have done that because we still have to do justice and we don't ignore the law, we apply the law when it is appropriate to use a standard that would do justice to the petitioner and, quite frankly, for the public as well. It's not a good policy to uniformly terminate individuals or employees under shocking circumstances.

I'll allow you to conclude, I don't want to interrupt your argument.

MR. GLASS: I acknowledge the reading of the law the same way. I'm just saying that Brown is a case where the tenured teacher, the Court recognized -- Judge Tisch recognized that shocking to the conscience is still a viable theory post Bolt and I think this case has some elements of that that you may consider in this case. And I think that given --

THE COURT: Can I ask you one question? I know you didn't write the papers. I was looking at the papers. I don't remember there being an argument as strong as you just made that the principal was out to get the petitioner.

MR. GLASS: I mean, it's clearly all throughout the first --

THE COURT: You're correct, but I'm saying in the petition I don't see it mentioned at all. And I was looking quickly through the memorandum. It does mention

the prior 3020-a proceeding and cited that there was some animus from the principal against the petitioner herein that was cited, but I don't remember seeing any reference to the second 3020-a charges that would --

MR. GLASS: I know that due process argument was made about --

THE COURT: Due process argument about consolidation was made, correct, but the argument that the reason that the petitioner was terminated was because of the animus of the principal, I don't remember it being a strong argument in this verified petition or amended verified petition.

You can look through the papers, we'll do opposition and then reply. You can just answer my question. I don't want to waste time.

MR. CARTER: Your Honor, just to address that first. There were allegations about the principal himself having animus. They were not retaliation-based allegations, as you just noted. The basic allegation was that the principal, who was involved in the first set of 3020-a allegations, harbored some sort of animus against him -- against the petitioner.

I think the critical thing to point out here is in the second set of allegations, those allegations were brought by the assistant principal and by students, not by

the principal. So that animus isn't necessarily the driver, even if there was some sort of retaliation-based argument.

Aside from that, I think that it is important to note just on the due process allegations, you know, due process itself is dictated here, as there was a full and fair investigation before charges are even brought. For that reason -- you know, the first charges were brought in May of 2016. There was not adequate time for the department to have some sort of, you know, investigative, you know, process before they could allege misconduct from April 2016. You know, one month is not going to allow them enough time to have that recitation and to bring those charges. The department was completely within its rights to bring two different sets of charges. That's provided by the statute and by the Collective Bargaining Agreement.

I think more generally, Your Honor is right to note that the shock to the conscience standard has been reaffirmed as extremely strenuous by the Court of Appeals recently. And the termination here is not done willy-nilly by the arbitrator. There is a 37-page opinion by the arbitrator setting forth, you know, a broad variety of misconduct by the petitioner, all of which is then coalesced in the actual penalty determination.

The arbitrator basically goes on to say that

there is no chance of remediation here. This is not something that, you know, petitioner might do better if given another chance. The arbitrator has made that decision.

And this Court just last year proclaimed that an arbitration award must be upheld if the arbitrator even offers a barely colorable justification for the outcome reached. We cited that in our papers, page seven of our memorandum. And I think that Your Honor would probably agree that there is more than just a barely colorable justification here.

THE COURT: Okay. Counsel?

MR. GLASS: Well, just a couple of points. I mean, I think there's some red herrings in some of the arguments made by the City.

First, this idea that there was an adequate time to do the April investigation. I mean, as you know, 3020-a is a completely discretionary process. There's a three-year statute of limitations. They weren't going to lose any time if they had decided to wait to finish that investigation before bringing this set of charges and this is why there's an unfairness to this.

If you think about it, if the board needs to bring a charge separately on every one of these things, I mean, it might cost them a lot of money, but they could get

a lot of priors that way. And so there was no reason at all that -- what was such a horrible charge that needed them to go forward for that first set -- second set of charges -- first set of charges at that point? It's completely within their discretion to say that there was a rush or they needed to get through more time for adequate process.

The incident happened. It was the same -- it was two April instances. There's an April 2016 incident for the first case, there's an April 2016 incident for the second case. In 99 percent of the cases, the board will charge these together because it's the same timeframe. Here they're playing games, they're saying we couldn't get them the first time, here's a principal who clearly doesn't want this guy in his school, he had to take him back and starts a second set. So they wanted to make sure because they couldn't get him the first time. So that seems to be -- you know, they have complete discretion when they want to do these charges.

The second point about the assistant principal is not involved in the second set of charges, again, is a red herring. Who controls the assistant principal? The principal. Do you think this principal's handprints were not on the second set of charges? I mean, it's the same school and it's the same principal. To say that the AP

students initiated this apart from the principal, it's ridiculous. I mean, there's no question the principal was behind this. The principal orchestrates these investigations, they decide whether to report to OSI and SCI. So he's clearly behind the second set of charges.

They even brought a second set of charges and then there was like a third set of charges. What you're seeing is a consolidation. Why did they do the second and third set of charges separately? Because what they did is actually they brought a second set of charges, then later they brought a third set of charges and then they consolidated the second and third set of charges together and leave the first one alone. So there's a lot of gamesmanship here with the DOE here.

Obviously, Mr. Dorcely wanted Mr. Severin gone under any purposes and they were going to do whatever it took to get it. And they decided to consolidate and play arbitrators to get the right combination of factors here to get Mr. Severin fired. The fact is Mr. Severin would still be teaching if he had not reported the principal for fraud.

The principal has since been removed. Honestly, I'm not sure you're aware of that. So he has been removed, but Mr. Severin has been the victim of reporting -- he's a whistleblower and he's being terminated because he's a whistleblower and the board knows how to play the games

with charges. I think he has -- I think there are 45 -- I think there are 45 separate allegations against Mr. Severin since he made that report, none before then.

So, you know, you can look at it -- I can't fight paper. You know, you can come up with charges against any teacher, you can pound them with 100 specifications, you're probably going to get them fired on the paper, but if you look at the cold reality of this case, Mr. Severin was a fine teacher who was loved by Mr. Dorcely until he reported him for fraud and he's being fired because he's a whistleblower. That's all this case is really about.

They could have brought a thousand charges or three charges, eventually they were going to get him and that's what they did, you know.

MR. CARTER: Your Honor, respectfully, may I respond?

THE COURT: Yes, quickly, please.

MR. CARTER: First, as I just noted, retaliation, those arguments are not in the petition, they shouldn't be considered here.

I think it's important to note that it was not the same school. The second set of charges involved two different schools, the Principal Dorcely led school and another school. So there was another set of administrators that also took issue with petitioner's conduct.

I think it's very important to note here that there is serious misconduct. I think petitioner's counsel is trying to, you know, somehow put out there that this was just like a piecemeal, you know, letter to file, letter to file. There was a very intense allegation that was substantiated regarding verbal abuse of students, homophobic voluntary vulgar effectives and it was substantiated.

This is considered the primary charge in the second set of charges. Again, our papers, you know, spell this out in detail, but this was a substantiated charge where petitioner was said to have, you know, derided abuse to students who were participating in a gender bender day and, quote, called the school a shit school, and said that it was a school that, quote, condoned promoting boys being gays. You know, again, this is not something that is lightly taken. There were students who reported this, there were students who were said to have been abused by this and who testified at a 3020-a proceeding, noting that this had a negative impact on their educational experience.

THE COURT: Okay. Thank you.

I just want to read some of the specifications into the record so that the crux and the allegations are clear what we are dealing with here today. I'm going to

note that the hearing officer amended the specifications on the date. I will read it with the correct date.

"On or about April 8, 2016, during Spirit Week, respondent stated to students in sum and substance: A. This is not okay and/or this is not right (referencing boys dressing up as girls); b. The school is promoting gays; c. The boys are dressed up like trannies; d. This is a disgrace."

Specification No. 2: On or about April 8, 2016, in the presence of students, respondent stated in sum and substance: This school is -- and I will spell it rather than saying it, B-U-L-L-S-H-I-T. I will spell again, A-S-S-H-O-L-E; C, piece of shit principal and/or principal is full of shit; D, this dumb principal; E, the principal is B-U-L-L-S-H-I-T or B-U-L-L-S-H-I-T principal, the principal is an A-S-S-H-O-L-E; G, this piece of S-H-I-T lets students walk around dressing like girls. This B-U-L-L-S-H-I-T principal let this happen.

The bulk of those charges were sustained by the hearing officer as follows: On page 35, this is what the hearing officer states, the first full paragraph:

"On this record, respondent incredibly testified the April 8th event he was charged with never happened and that he was a victim of conspiracy between the administration and certain students. I find respondent's

failure to even acknowledge the event and his role in it is beyond troubling, it is inexcusable and uncorrectable. The first step in changing anything is acknowledgment of the problem. Respondent's failure to acknowledge what all the other credible evidence established (i.e. three eyewitnesses, contemporaneous reporting, contemporaneous written complaints) demonstrates his inability to correct his behavior.

Further, under closer examination, respondent's outburst was brought on by his personal frustration stemming from his personal animosity towards Principal Dorcely. The actions of the students were secondary to his contempt and lack of respect for Principal Dorcely. In this regard, whatever corrective action respondent needs is personal and not professional. Deciding appropriate penalties under 3020-a involves the question of whether professional correction can be achieved, not personal correction. At the crux of respondent's misconduct is a personal inability to let his resentment go and to a lesser extent, his ability to confirm directives.

The proven conduct also evidenced respondent's unprofessionalism, extreme poor judgment, lack of control, lack of restraint, impulsiveness and unwillingness to accept the demands of this position. Simply put, respondent could have mitigated the situation and avoided

the entire April 8th incident and many of the proven specifications concerning a failure to follow directives by accepting the reasonable expectations of the employer and not allowing personal resentment to build to the point of verbal explosion. It has often been said that, quote, the tongue is mightier than the sword, end quote, and on these facts, respondent's tirade cut an incalculable swath of damage on many levels. Perhaps that is why respondent maintains that the event never happened."

With regard to the penalty, the hearing officer stated: "Respondent has a 20-year record of employment with the Department. Respondent would rather label his students, coworkers and colleagues and supervisors liars/dishonest and co-conspirators than accept responsibility for his actions. He has allowed personal resentment to blind him to his professional responsibilities and has continued to disobey the directive of his supervisors. On this record, I find that the employer has demonstrated just cause to terminate the employment of respondent. I find that it is highly unlikely respondent can or will correct his behavior. Respondent's failure to acknowledge that his outburst of April 8, 2016, demonstrates a continued denial of wrongdoing and evidences respondent's lack of understanding that what he did was wrong and must not be continued.

Since respondent did not get the message, his employment is terminated.

These are very strong words of the hearing officer. The argument that these charges were sustained as a result of the animus that the principal had to petitioner really goes to the heart of the issue. The hearing officer found at least three types of evidence that demonstrably showed that the events of April 8, 2016 occurred. The Petitioner denies having any involvement and making such allegations. That is the crux and the heart of dispute.

As counsel knows, and I'll clarify to petitioner herein, this Court cannot substitute its judgment as to credibility. With regard to credibility, the hearing officer's determinations cannot be disturbed. In this case the hearing officer made correct findings and found that the April 8 comments were made by the petitioner. The petitioner denies this. This Court must take those allegations as true.

Under the circumstances, the allegations are heinous, they are unbecoming of a teacher and have no place in our society, let alone in a place of higher learning. A teacher is supposed to be a model for students that they learn and be able to accept the pearls of wisdom that emanate from their mouths. We educate children and we

provide moral fabric and background for the children to learn.

To undercut, to use expletives that this Court cannot even state in a courtroom, in front of the children and describing the policies of the school to have inclusiveness and to show a merciful side to the students that everyone is accepted in school and it's a place where you're going to learn, cannot be tolerated in our society and certainly cannot be tolerated in a school.

The standard is shocking the conscience. Quite frankly, it's the right result. If the allegations are true, this is no place for such a teacher in a school. It does not shock my conscience. It would be shocking if we allow a teacher like that to remain in the school under those circumstances. This is even more exacerbated by the first 3020-a. While there was minimal misconduct, it's the second time, it's not the first.

The hearing officer correctly noted, there is no ability to mitigate when the petitioner does not recognize the wrong or harm that was done to not only the students, but the entire system and the ability for the students to learn under such a circumstance. Therefore, this Court denies the petition and dismisses the proceeding.

Please order the record.

MR. CARTER: Thank you, Your Honor.

Proceedings

THE COURT: You're welcome. Have a good day.

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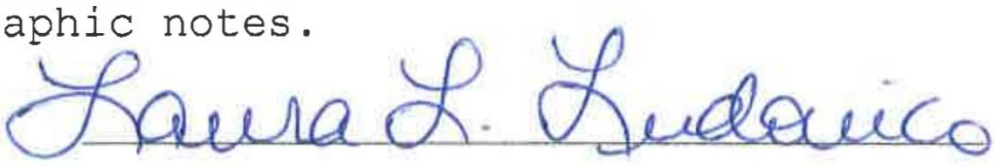
I, Laura L. Ludovico, a senior court reporter for the State of New York, do hereby certify that the foregoing is a true and accurate transcription of my original stenographic notes.



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